

GUIDANCE ON ISSUES GENERATED FROM NEJAC MEETINGS

This guidance document is provided to assist NEJAC members in identifying what how to address issues arising during the NEJAC meetings. These issues include handling NEJAC concerns and resolutions, preparing resolutions for consideration by the Executive Council, and establishing a workgroup. There are four different types of activities at NEJAC meetings.

(1) **ACTIONS** are those issues arising out of a NEJAC meeting for which NEJAC requests a response from EPA and which require a consensus vote. Such actions may come from either the NEJAC Executive Council or a subcommittee.

C (B) **NEJAC Executive Council Actions** which are signed by the Chair of the Executive Council and addressed to the EPA Administrator, include:

- **Concerns (C)**, which are those formal expressions of opinion that may or may not request a recommended action.
- **Resolutions (R)**, which are those formal declarations requesting Agency action or investigation, can only be issued by the Executive Council.

C (C) **NEJAC Subcommittee Actions** which are signed by the Chair of the subcommittee and addressed to an appropriate EPA program or regional office, are considered Concerns (C) and include:

- **Information requests**, which ask for clarification or additional information. These requests may include information and data gathering, requests for program briefings and meetings, and review of Agency documents
- **Proposed resolutions**-- when these resolutions are formalized by subsequently being adopted by the NEJAC Executive Council does it become a NEJAC resolution and the type changed to (R).

(2) **PUBLIC COMMENTS (P)** are those concerns and requests communicated to the NEJAC during a designated public comment period, and which then are transmitted to EPA for follow-up.

(3) **SPEAKER COMMITMENTS (S)** are those obligations made by a speaker or presenter during either a NEJAC subcommittee or Executive Council session which requires follow-up.

(4) **MEMBER REQUESTS (M)** are those requests for information by an individual NEJAC Executive Council or subcommittee member that requires follow-up by that individual member. This follow-up may take the form of a letter.

(5) **ADMINISTRATIVE TASKS (A)** are those items that support the activities of the NEJAC and it's subcommittees, such as providing copies of a report, coordinating conference calls. This category also includes information requests which ask for clarification or additional information. These requests may include information and data gathering, and requests for program briefings and meetings.

GUIDANCE FOR PROCESSING NEJAC CONCERNS

A concern is usually a formal expression of opinion from the Council on an issue which requires full Council vote. A letter signed by the Chair is the appropriate vehicle by which to transmit these concerns to the Agency. The opinion expressed in the letter may or may not request a recommended action from the Agency (i.e. the letter to CEQ expressing dissatisfaction with delay in issuance of Environmental Justice Guidance for NEPA).

GUIDANCE FOR PREPARING NEJAC RESOLUTIONS

A Resolution is a formal declaration requesting Agency action or investigation that requires full Council vote. When preparing a resolution for consideration by the NEJAC Executive Council, consider the following:

1. The statement has to be concise but comprehensively written describing the background on the issue. It should include an explanation of options and stakeholder positions considered.
2. The statement should state a specific recommended action that the Agency is to take (i.e. NEJAC calls for EPA to examine the extent to which mercury poisoning is associated with cultural practices.)
3. Resolutions, generally, focus on issues which have not received appropriate government attention or have not been resolved or remedied through official government processes.

The process for drafting resolutions and a sample of a resolution (enforcement Proposed Resolution No. 5) are enclosed with this package for your information and use. The following is a three-step process for forwarding a resolution to the NEJAC Executive Council for processing; and, forwarding a letter signed by the NEJAC Chair to the EPA Administrator:

Proposing the Resolution. <i>This task is performed by the Subcommittee, except in the case of an emergency resolution resulting from public comment when the Executive Council presents and votes on it immediately.</i>	
C	Propose the need for a resolution; ensure that broad policy issues remain the focus of the resolution
C	Prepare the text of the resolution using the attached sample as a guide; refer to the keyword glossary for terms and use the tracking number of the subcommittee concern for which the resolution is prepared
C	Vote on the resolution
C	Provide the resolution to the NEJAC Program Manager who then forwards it to the Executive Council 30 days prior to the vote being taken
Consideration and Disposition of the Resolution. <i>This task is performed by the Executive Council.</i>	
C	Read and discuss the resolution
C	Conduct vote on the resolutions during the NEJAC meeting, indicating approval or disapproval by consensus vote
C	Table or return disapproved resolutions to the Subcommittee for additional follow-up
C	Forward approved resolutions to the DFO of the subcommittee for preparation of the transmittal letter and final revisions to the resolution
Processing the Approved Resolution. <i>This task is performed by the DFO of the subcommittee, the NEJAC Program Manager, and the Chair of the NEJAC.</i>	

Subcommittee DFO will prepare the transmittal letter from the Chair of the NEJAC to the EPA Administrator--the letter will suggest which EPA program or regional office should coordinate the effort on this resolution. This letter, along with the full text of the resolution, is transmitted electronically to the NEJAC Program Manager.
NEJAC Program Manager will assign the NEJAC resolution number and forwards to the NEJAC Chair the transmittal letter and full text of resolution for signature and transmittal to the EPA Administrator.
NEJAC Chair signs the transmittal letter and transmits the letter and resolution to the EPA Administrator
NEJAC Program Manager distributes to the NEJAC members and the EPA Environmental Justice Steering Committee copies of the transmittal letter and resolution
Responding to the Resolution. <i>This task is performed by the responsible EPA program or regional office. Logging and receipt of the resolution is handled by the Office of the Administrator which assigns the action to the EPA program or regional office identified in the transmittal letter. A control number is assigned at this time. All control items are monitored by the Office of the Administrator to ensure timely response--usually within two to three weeks. The appropriate EJ Steering committee member will monitor the item to ensure that it is being responded to appropriately.</i>
Investigate the concerns stated in the resolution
Respond directly to the NEJAC with a copy to the NEJAC program Manager

GUIDANCE FOR ESTABLISHMENT OF NEJAC WORKGROUPS

The process for establishing workgroups is attached for your information and use.

Enforcement Resolution No. 5

WHEREAS, The United States Environmental Protection Agency (EPA), a federal agency created in 1970, with the direct purpose and responsibility to develop and implement strategies that protect public health and the environment; and

WHEREAS, Title VI of the Civil Rights Act of 1964 prescribes that each Federal agency shall ensure that all programs or activities receiving Federal financial assistance do not directly, or through contractual or other arrangements, use criteria, methods, or practices that discriminate on the basis of race, color, or national origin; and

WHEREAS, Title VI of the Civil Rights Act of 1964 provides authority to remedy past discrimination and prevent discriminatory conduct based on race, color, or national origin to achieve Constitutional premises of equal protection under the law; and

WHEREAS, Presidential Executive Order 12898, entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," directs Federal agencies to focus and develop strategies which address adverse health and environmental effects in minority populations and low-income populations; and

WHEREAS, EPA has recognized and confirmed data which shows that environmental abuses have occurred in areas of minority populations and low-income populations and has failed to act in a responsible and timely manner; and

WHEREAS, EPA's pace in processing Title VI complaints involving environmental discrimination may have violated Section 7, Volume 40 of the Code of Federal Regulations, by failing to meet mandated deadlines related to cases articulated and framed by community organizations on behalf of citizens of minority populations and low-income populations; and

WHEREAS, EPA's approach under Title VI has been to adopt a program of voluntary compliance, which has continuously failed and will continue to fail, thus allowing a continuing pattern of environmental violations to occur that disproportionately and adversely affects minority populations and low-income populations; and

WHEREAS, EPA needs to demonstrate effective leadership in implementing and enforcing environmental laws and regulations and Title VI of the Civil Rights Act of 1964; and

WHEREAS, EPA staffing is currently limited to four attorney positions and there are only three attorneys to process the increasing caseload of Title VI complaints; and

WHEREAS, EPA headquarters and regional civil rights staffing and accountability would facilitate a comprehensive national Title VI compliance and enforcement program; and

WHEREAS, EPA is required to educate states and the regulated community regarding Title VI mandates and responsibilities; and

WHEREAS, the National Environmental Justice Advisory Council (NEJAC), was established on April 11, 1994, comprised of representatives of academia, business, industry, Federal, State, Tribal, local government, environmental organizations, community groups and non-governmental organizations, with the goal of providing advice to the EPA on matters related to environmental justice for minority population and low-income populations; and

WHEREAS, NEJAC advises EPA to develop, create and coordinate staffing, training programs, provide resources and effective-time lines for addressing both past and current Title VI complaints of

environmental abuse.

Now therefore be it resolved, that NEJAC urges and advises EPA to:

- C Interpret Title VI in a manner designed to strengthen civil and environmental rights protections consistent with the Constitutional mandate of equal protection under law; and
- C Comply with Section 7, Volume 40 of the Code of Federal Regulations mandated deadlines in addressing Title VI complaints filed by minority populations; and
- C Accelerate the pace of case consideration and resolution, by providing guidance and technical assistance to and oversight of EPA regions regarding filing and tracking Title VI complaints, ensuring compliance with Title VI and enforcement of Title VI; and
- C Provide uniformity and consistency to Title VI compliance and enforcement programs, while also creating time lines in addressing and resolving current complaints; and
- C Consolidate all Title VI functions into one office (including headquarters and regional staff), and providing direction, career professional support and budgetary support adequate to fulfill the responsibilities of this office; and
- C Review, analyze and jointly refer Title VI cases to EPA's Office of Enforcement and Compliance Assurance for immediate action and policy development on: (a) environmental violations that may cause or contribute to multiple exposures, cumulative impacts and synergistic effects; and (b) environmental noncompliance that may give rise to Title VI complaints; and
- C Provide guidance and technical assistance to the states and other EPA-funded programs regarding the obligation to ensure fulfillment of the Constitutional principle of equal protection under law, and oversight of states to guarantee it; and
- C Expedite EPA's follow-up on Title VI cases by providing a process and opportunities for Title VI complainants and states to comment on the Agency's draft policies, guidance and technical assistance directives; and
- C Convene a national conference to address Title VI enforcement in partnership with the NEJAC Enforcement Subcommittee and with the advice of a cross-section of organizations interested in the health and civil rights protection of residents of minority populations, and low-income populations; and
- C Create a joint working partnership with NEJAC and, specifically, with the NEJAC Enforcement Subcommittee, to address, consult on and coordinate development of a process and policy to address these and future complaints, this resolution, and to develop and implement the national conference on Title VI enforcement.

NEJAC GUIDANCE FOR ESTABLISHING WORKGROUPS

February 18, 1997

The following information is provided to eliminate any confusion associated with the creation of workgroups. This guidance has been reviewed by EPA's legal staff in the Office of General Counsel.

GENERAL REQUIREMENT

1. A workgroup may be established to address a specific issue, to collect information, or conduct data analysis.
2. The need for the workgroup must be identified by the Parent Council or one of the Subcommittees.
3. Each workgroup must be recommended to the full NEJAC Council as a resolution and must be voted on and approved by a majority of the Council.
4. Each workgroup member must be recommended by the Council and appointed by the Designated Federal Official for the full NEJAC Council.
5. Each workgroup member will be requested to sign an acceptance form (copy attached).
6. A workgroup is an extension of the NEJAC and must abide by all operating procedures and bylaws of the NEJAC.
7. Each workgroup must meet the following criteria:

CRITERIA FOR ESTABLISHING A WORKGROUP

7. a. The workgroup is established to address a specific issue or to collect information and/or conduct data analysis.
7. b. The workgroup must have a termination date. It cannot be appointed into perpetuity.
7. c. There must be at least one member appointed to the Workgroup from the Parent Council or from the Subcommittee under which the workgroup is conducting the work.
7. d. There must be an EPA staff person on the Workgroup to serve in the role of a Designated Federal Official.
7. e. The meetings must be open to the public and when appropriate, advertised in the Federal Register.
7. f. Membership does not have to represent each category of stakeholder as required by the NEJAC but the views presented at any meeting of a workgroup must be balanced and represent all sides of the issue.
7. g. All findings from the Workgroup must be submitted through the Subcommittee to the NEJAC Council for review **BEFORE** the findings can be released to the public.
7. h. The EPA member must obtain signed acceptance forms and maintain a list of the workgroup members. Activities of each workgroup will be included in the annual report required by the Federal Advisory Committee Act. The forms must be sent to the NEJAC DFO.

NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL

WORKGROUP ACCEPTANCE FORM

To: Marva E. King
U.S. EPA (2201A)
401 M Street S.W.
Washington, DC 20460

In response to the invitation for membership on a National Environmental Justice Advisory Council (NEJAC) Workgroup on _____ . I am pleased to accept this position for the term specified in the letter of invitation.

Sincerely,

Include your FAX Number: _____ Phone Number: _____

United States Citizen: Yes _____ No _____

List any environmental-related associates, societies, or organizations of which you are a member.

Thank you. If you have any questions, you may call Marva E. King at 1-800-962-6215 (select 3, then 5, then 5-4-6-4-6-2-7).

DEAR NEJAC WORKGROUP MEMBER

It is my pleasure to confirm your acceptance to serve as a member of a U.S. Environmental Protection Agency's National Environmental Justice Advisory Council (NEJAC) Workgroup on _____ for a _____ month/year term beginning _____ and ending _____. Your Workgroup is chaired by _____ and reports to _____ (*enter either Parent Council or Subcommittee name*).

Enclosed is a package containing the NEJAC charter, a guidance for workgroups, a description of what your workgroup will be focusing on, and a confirmation page of your willingness to serve on this workgroup.

If you need further assistance, please contact me at _____.

Sincerely,

Designated Federal Official
(either Parent Council or Subcommittee)

Enclosures

cc: Marva E. King
Office of Environmental Justice